

DOCUMENT RESUME

02648 - [A165263C]

[Protest against Award of Contract to Any Other Firm and Claim for Loss of Fixed Fee]. E-188377. June 3, 1977. 2 pp.

Decision re: Marked Horizon, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services: Notifying the Congress of Status of Important Procurement Programs (1905).

Contact: Office of the General Counsel: Procurement Law I. Budget Function: General Government: Other General Government (806).

Organization Concerned: Thunder Corp.; Bureau of Indian Affairs. Authority: 4 C.F.R. 20.2(a). 54 Comp. Gen. 937.

Claimant protested the award of a contract to any other firm and submitted a claim for its lost fixed fee under the protested contract. The protest was filed with GAO more than 10 days after receipt of notification of the adverse agency action and was, therefore, untimely and not for consideration on its merits. The claim for lost fixed fee was not considered because claims for anticipated profits have continually been rejected. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-188377**

**DATE: June 3, 1977**

**MATTER OF: Marked Horizon, Inc.**

**DIGEST:**

1. Protest filed with our Office more than 10 days after receipt of notification of adverse agency action on protest filed initially with contracting agency is untimely under 4 C.F.R. § 20.2(a) (1977) and not for consideration on merits.
2. Claim for lost fixed fee will not be considered because claims for anticipated profits have continually been rejected.

Marked Horizons, Inc., protests the award of a contract to any other firm for plant operation, repair and maintenance of the Southwestern Indian Polytechnic Institute, Albuquerque, New Mexico. The RFP was issued by the Bureau of Indian Affairs, Department of the Interior (BIA). Simultaneously, Marked Horizon has submitted a claim for \$37,431.46, allegedly representing its lost fixed fee under the protested contract awarded the Thunder Corporation.

Marked Horizon submitted its proposal to the protested procurement on September 17, 1976. Negotiations were held on October 29, 1976. On November 8, 1976, Marked Horizon was notified that award had been made to another firm. By letter dated November 8, 1976, Marked Horizon protested to the contracting officer. By letter dated December 8, 1976, the contracting officer denied each of the allegations raised by Marked Horizon and, as requested by the protester, furnished the Comptroller General's address for the purpose of protesting. Marked Horizon's protest was received in our Office on February 14, 1977.

Section 20.2(a) of our Bid Protest Procedures (4 C.F.R. part 20 (1977)) requires that if a protest is initially filed with the agency, any subsequent protest to our Office must be filed within 10 working days of formal notification of initial adverse agency action to be timely. Thus, in order to be timely filed Marked Horizon's protest must have been filed within 10 days of its receipt of the December 8, 1976, letter. Clearly, the letter received on February 14, 1977, is untimely filed and the protest is not for consideration on its merits.

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Furthermore, claims for recovery of anticipated profits have continually been rejected. Bell & Howell, 54 Comp. Gen. 937 (1975), 75-1 CPD 273.

In commenting upon the timeliness of its protest, Marked Horizon points to certain provisions of 25 C.F.R. as providing a basis to consider the protest. However, these provisions govern the consideration of protests by the BIA, not our Office. Rather, protests lodged with our Office must conform to our procedures in order to be considered.

*R. F. Kottan*  
Deputy Comptroller General  
of the United States